

§ 968.115

24 CFR Ch. IX (4-1-12 Edition)

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Public Housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the public housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

- (1) Luxury improvements;
- (2) Indirect administrative costs (overhead), as defined in OMB Circular A-87;
- (3) Public housing operating assistance;
- (4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and
- (5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

- (1) New construction or acquisition of additional public housing units, including replacement units;
- (2) Modernization activities related to the public housing portion of housing developments held in partnership, or cooperation with non-public housing entities; and
- (3) Other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

[61 FR 8738, Mar. 5, 1996, as amended at 62 FR 27126, May 16, 1997; 63 FR 46108, Aug. 28, 1998; 64 FR 50229, Sept. 15, 1999]

§ 968.115 Modernization and energy conservation standards.

All improvements funded under this part shall:

- (a) Meet the modernization standards as prescribed by HUD;
- (b) Incorporate cost-effective energy conservation measures, identified in

the PHA's most recently updated energy audit, conducted pursuant to part 965, subpart C;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing.

[61 FR 8740, Mar. 5, 1996]

§ 968.120 Force account.

(a) For both CIAP and CGP, a PHA may undertake the activities using force account labor, only where specifically approved by HUD in the CIAP budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an overall high performer and Modernization high performer under the PHMAP.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the PHA and the RMC provide otherwise by contract.

[61 FR 8740, Mar. 5, 1996]

§ 968.125 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the PHA, a PHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the PHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

[61 FR 8741, Mar. 5, 1996]

§ 968.130 Fund requisitions.

To draw down modernization funds against the approved CIAP budget or

CGP Annual Statement, a PHA shall comply with requirements prescribed by HUD.

[61 FR 8741, Mar. 5, 1996]

§ 968.135 Contracting requirements.

In addition to the requirements specified in 24 CFR parts 5, 85, and 965, subpart A, and § 968.110(e), the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with the following HUD requirements:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For both CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over \$100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the moderniza-

tion and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.